IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2007

CORAM :

THE HONOURABLE MR.JUSTICE D.MURUGESAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1126 of 2007

The Commissioner of Income-tax,
Tiruchirapalli. .. Appellant/Respondent.

Vs.

K.Rajapandian .. Respondent/Appellant.

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, Chennai in I.T.A.No.2145/Mds/2003 dated 13.04.2007 for the assessment year 1993-94 against the order of the Office of the Commissioner of Income Tax [appeals] Cantonment, Tiruchirappalli 1 in ITA.No.196/2003-2004 dated 24.9.2003 and against the order of the Office of the Income Tax Officer, Ward IV [2] Trichy dated 18.2.2003 in G.I.No./PA.No.3740 R/AAPPR 2107 E.

For Appellant : Mr.N.Muralikumaran,,
Sr.Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.JANARTHANA RAJA, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, Chennai in I.T.A.No.2145/Mds/2003 dated 13.04.2007, raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the reopening of the assessment under section 147 of the Income-tax Act is bad in law and the reopened assessment is annulled, even though the assessing officer complied with the order of the Commissioner of Income-tax (Appeals) for the assessment years 1991-92 to 1994-95?"

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2. The facts leading to the above substantial question of law are as under:-

The assessee is an individual. The relevant assessment year is 1993-94 and the corresponding accounting year ended on 31.03.1993. The assessee filed Return of income on 08.12.1996 admitting income at Rs.55,530/- from maligai business and Rs.20,000/- from agriculture. The assessee has constructed a shopping space cum Kalyana Mandapam during the previous years relevant to the assessment years 1991-92 to 1994-95. The cost of construction as per the Approved Valuer's Report was Rs.18,50,000/- whereas the assessee had admitted the cost at Rs.16,70,000/-. The difference in the cost of construction works out to Rs.1,80,000/-. The C.I.T.(A) in his earlier order dated 01.01.1997 in I.T.A. Nos.321 and 322/94-95/TRY, relating to the assessee's own case for the assessment years 1991-92 and 1992-93, had given a direction that the difference between the total cost fixed and the total cost disclosed by the assessee, should be brought to tax for the assessment years 1991-92 to 1994-95. In view of the same, the Assessing Officer issued notice under Section 148 of the Income-tax Act ("Act" in short) to the assessee. By letter dated 30.05.2001, the assessee has stated that the original Return filed may be treated as Return filed in response to notice under Section 148 of the Act. The assessment was completed under Section 143(3) r/w Section 147 of the Act. While completing the assessment, the Assessing Officer made an addition of Rs.84,073/-. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of reassessment. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal filed by the assessee on the ground that reopening of the assessment is bad in law and also relied on this Court judgment in the case of Commissioner of Income-tax Vs. V.T.Rajendran, [2007] 288 ITR 312 (Mad). Hence the present tax case by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the Assessing Officer has reopened and completed the assessment in view of the direction given by the earlier C.I.T.(A)'s order, stated supra and hence the reopening of the assessment is valid in law. Therefore, the order passed by the Tribunal holding that reopening is bad in law is wrong, illegal, without basis and justification.

4. Heard the counsel. The assessee constructed a shopping space-cum-Kalyana Mandapam during the previous years relevant to the assessment years 1991-92 to 1994-95. During the course of assessment proceedings for the assessment years 1991-92 and 1992-93, the Assessing Officer made a reference to the Valuation Cell of the Income-tax Department to estimate the cost of construction of the Shopping space-cum-Kalyana Mandapam. In his report, the Valuation Officer estimated the cost at Rs.24,81,000/-. The assessments for the assessment years 1991-92 and 1992-93 were finalised by taking the cost of construction on the basis of estimate made by the Valuation Cell. In these assessments, the additions were made towards excess cost in proportion to the cost disclosed in the Returns for

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the relevant assessment years. Aggrieved against these additions, the assessee preferred an appeal before the C.I.T.(A). The C.I.T.(A), in his order in I.T.A. Nos.321 and 322/94-95/TRY dated 01.01.1997, fixed the total cost of construction at Rs.18.50 lakhs. The C.I.T.(A) also directed that the difference between the total cost thus fixed and the total cost disclosed by the assessee should be brought to tax for the assessment years 1991-92 to 1994-95 in as much as construction of the Shopping space-cum-Kalyana Mandapam had taken place during the previous years relevant to these four assessment years. In order to assess the proportionate difference for the present assessment year, the Assessing Officer reopened the assessment under Section 147 of the Act. There is no dispute that the direction given in the earlier order of the C.I.T.(A) is on the basis of the Departmental Valuer's Report. In this case, the Tribunal came to the conclusion that reopening of the assessment is on the basis of the Departmental Valuer's Report. The Tribunal also relied on this Court judgment in the case of Commissioner of Income-tax Vs. V.T.Rajendran, [2007] 288 ITR 312 (Mad), wherein it was held as follows:-

> "That apart, we do not hesitate to hold that the report of the Departmental Valuation Officer cannot be a basis because the valuation cannot be an arithmetical appreciation of the materials used for the construction nor the expenses incurred by the assessee in that regard, as variations are bound to be there, as fairly conceded by learned counsel appearing for the Revenue that there is variation in the value of the construction between the Central PWD rates and the State PWD rates themselves."

In the present case, there is no dispute that the cost of construction is fixed by the earlier C.I.T.(A)'s order relating to the earlier assessment year at Rs.18,50,000/- which was based on the Approved Valuer's Report, whereas the assessee had admitted the cost at Rs.16,70,000/-. The difference of Rs.1,80,000/- was to be assessed proportionately in view of the C.I.T.(A)'s order relating to the earlier assessment years. The Tribunal had correctly followed the principles enunciated in this Court's judgment in the case of Commissioner of Income-tax Vs. V.T.Rajendran, cited supra, holding that reopening is bad in law. Further, it is noted in this case that the tax effect arising out of addition made by the Assessing Officer, is a negligible one.

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5. In view of the foregoing reasons, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence no substantial question of law arises for consideration of this Court and accordingly the tax case is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Asst. Registrar,
The Income Tax Appellate Tribunal,
Besant Nagar, Madras 90.

2. The Assistant Registrar,
Income Tax Appellate Tribunal, Chennai 'D' Bench,
Chennai.

3. The Commissioner of Income-tax (Appeals),
Tiruchirapalli.

4. The Income-tax Officer,
Ward IV(2), Trichy.

+ 1 CC To Mr.N.Muralikumaran, Advocate SR NO.50823

T.C.(A) No.1126 of 2007

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